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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of Section 3(n) and)
332 of the Communications Act)

cc
GN Docket No. 93-252

To: The Commission

REPLY COMMENTS OF CENTURY CELLUNET, INC.

Century Cellunet, Inc. ("Century") hereby submits its reply comments on the Notice of Proposed Rulemaking in the above-captioned proceeding, which proposes revisions to the Commission's Rules to create a comprehensive and consistent framework for regulation of all mobile services.¹ In particular, Century strongly opposes the proposals of certain commenters to impose additional regulatory safeguards on commercial mobile service affiliates of dominant carriers.

I. THE RECORD SUPPORTS THE ADOPTION OF RULES THAT ENSURE
EQUAL TREATMENT OF COMPETING MOBILE SERVICE PROVIDERS
AND THAT MINIMIZE REGULATORY REQUIREMENTS

In its initial comments, Century urged the Commission to fashion a regulatory framework for all mobile services consistent with several guiding principles. First, comparable, competitive mobile service providers (such as those offering cellular, personal communications service ("PCS"), and enhanced specialized mobile radio ("ESMR"))

¹ Implementation of Sections 3(n) and 332 of the
Communications Act, FCC 93-454 (released Oct. 8, 1993)
(Notice of Proposed Rulemaking).

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services) should be governed by the same regulatory rights and obligations. Second, commercial mobile service providers should be exempted from Title II requirements to the maximum extent allowed by Congress. Third, state regulation of mobile services should be minimized through the proper exercise of the Commission's preemption authority and should not be permitted to undermine regulatory parity goals.

A substantial number of commenters agree with Century that a regulatory framework that ensures equal treatment of competing mobile service providers and minimal regulatory requirements on commercial mobile service licensees would best serve the public interest. Indeed, almost all commenters concur that the existing ESMR and cellular services should be classified as commercial mobile services and regulated similarly.² Likewise, numerous commenters advocate that PCS licensees and comparable, existing mobile service providers (like cellular) should enjoy the same regulatory flexibility and face the same regulatory burdens.³

² See, e.g., American Mobile Telecommunications Association ("AMTA") at 12-14; Bell Atlantic Companies ("Bell Atlantic") at 14-17; Cellular Telecommunications Industry Association ("CTIA") at 15-16; 18-19; GTE Service Corporation ("GTE") at 9-10; McCaw Cellular Communications, Inc. ("McCaw") at 20-21; Mobile Telecommunications Technologies Corp. at 10-11; Motorola, Inc. ("Motorola") at Appendix A; Nextel Communications, Inc. at 14; Southwestern Bell Corporation at 16.

³ See, e.g., Bell Atlantic at 16-17; BellSouth at 26-28; GTE at 10-14; McCaw at 12-14; NYNEX Corporation at 17-18; Telocator at 17-18.

Further, the comments exhibit almost unanimous support for the Commission's proposal to forbear from imposing most Title II regulation on commercial mobile service providers. The commenters largely agree that the mobile services marketplace is highly competitive and thus will ensure reasonable rates and high quality service to consumers.⁴ As the record demonstrates, the tariffing and other requirements contained in Title II of the Communications Act, as well as additional state regulation, are simply unnecessary to protect mobile service customers.⁵

II. ADDITIONAL REGULATORY SAFEGUARDS SHOULD NOT BE IMPOSED UPON COMMERCIAL MOBILE SERVICE AFFILIATES OF DOMINANT CARRIERS

A handful of commenters contend that the Commission should impose additional regulatory "safeguards" on

⁴ Only the People of the State of California and the California Utilities Commission ("CPUC"), and the National Cellular Resellers Association ("NCRA"), disagree with the characterization of the mobile services marketplace as competitive and thus urge the Commission not to forbear from tariff and other Title II regulation of commercial mobile service providers. CPUC at 7-8; NCRA at 14-16. However, these parties' characterization of the cellular marketplace was expressly rejected by the Commission in its cellular CPE bundling proceeding. See Bundling of Customer Premises Equipment (Report and Order), 7 FCC Rcd 4028, 4029, appeal dismissed, National Cellular Resellers Ass'n v. FCC, No. 91-1269 (D.C. Cir. 1992).

⁵ See, e.g., AMTA at 19-21; Arch Communications Group, Inc. at 10-11; BellSouth at 28-31; CTIA at 25-39; GTE at 14-19, 24-25; McCaw at 7-11, 22-28; National Telephone Cooperative Ass'n at 5-7; Telocator at 18-23, 25-27; Vanguard Cellular Systems, Inc. at 14-15.

commercial mobile service licensees that are affiliated with dominant carriers.⁶ Suggested safeguards include cost accounting and separate subsidiary requirements, and cross-subsidy and non-discrimination prohibitions.⁷ It is clear, however, that imposing these additional safeguards on all commercial mobile affiliates of dominant carriers would be both unnecessary and unduly burdensome.

The Commission has already examined this issue in the cellular context and specifically concluded that the wireless affiliates of independent telephone companies should not be subject to additional regulatory restrictions.⁸ The record here provides no basis for reversing that conclusion. Indeed, even the Bell Atlantic Companies seriously question the need for the safeguards as currently applied, but nonetheless seek to burden others with these unwarranted requirements. Given the evident doubts -- even on the part

⁶ See, e.g., Bell Atlantic at 35-39; Comcast Corp. ("Comcast") at 12, 14-15; Cox Enterprises at 6-8; In-Flight Phone Corporation at 4.

⁷ Several commenters also argue that equal access requirements should be imposed on commercial mobile service affiliates of dominant carriers, or on all commercial mobile service licensees. As Century noted in its initial comments, this is not the appropriate proceeding for examining the scope of equal access obligations. See Century at 7, n.10.

⁸ Inquiry into the Use of the Bands 825-845 MHz and 870-890 MHz for Cellular Communications Systems; and Amendment of Parts 2 and 22 of the Commission's Rules Relative to Cellular Communications Systems, 89 FCC 2d 58, 78-80, further recon., 90 FCC 2d 571 (1982), appeal dismissed sub nom., United States v. FCC, No. 82-1526 (D.C. Cir. 1983).

of proponents -- as to the restrictions' current utility and the complete lack of evidence that affiliates of dominant carriers generally require structural and accounting safeguards to prevent competitive abuses, the Commission should not expand the scope of these safeguards as suggested.

Moreover, imposing additional safeguards on dominant carriers' affiliates would be extremely burdensome, especially on small companies like Century. As the Commission has previously recognized, compliance with these requirements would impose

. . . costs of additional personnel and the possible dis-economies resulting from separate transmission facilities. . . . [S]uch costs may be prohibitive for some companies, thus reducing the number of potential competitors . . . especially in rural areas.'

In addition to the substantial nature of these costs of compliance, affiliates of dominant carriers would be significantly disadvantaged by the fact that many of their competitors would not be subject to these burdensome requirements. Indeed, many of Century's current cellular competitors are not affiliated with landline carriers. Were Century required to comply with such safeguards, its ability to compete effectively would be seriously hindered.¹⁰ Such

⁹ Id. at 78.

¹⁰ Certain commenters also argue that affiliates of dominant carriers should be subject to Title II tariffing requirements. See, e.g., General Communication, Inc. at 3.
(continued...)

selective regulation -- and its detrimental effects on competition -- would clearly contravene the regulatory parity principles at the heart of Congress' amendments to Section 332 of the Communications Act.

III. CONCLUSION

For the foregoing reasons, Century urges the Commission to adopt rules that ensure regulatory parity among competing mobile service providers and minimal regulatory requirements on commercial mobile service licensees. To that end, the Commission should not impose cost accounting, structural separation, an other special requirements on commercial mobile service affiliates of dominant carriers.

Respectfully submitted,

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¹⁰(...continued)
The detrimental effects of such selective regulation on competition is similarly clear.